

In Re: State of U.P.

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Court : Allahabad

Decided On : Apr-09-1958

Reported in : AIR1959All69; 1959CriLJ16

Judge : A.N. Mulla and ;B.N. Nigam, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 561A

Appeal No. : Criminal Misc. Appln. No. 41 of 1958

Appellant : In Re: State of U.P.

Advocate for Pet/Ap. : Kanhailal Misra, Adv. General and ;P.N. Chaudhari, Addl. Govt. Adv., U.P.

Disposition : Application dismissed

Judgement :

A.N. Mulla, J.

1. This is in application under Section 561-A Cr. P. C. filed by the State of Uttar Pradesh praying that certain observations made by a Bench of this Court in Prayag Bux and another v. State (Criminal Appeal No. 549 of 1956) be expunged. The remarks sought to be expunged are as follows:

'It is surprising that where the obvious answer hits one in the eye, that is disregarded and a fantastic explanation is sought. It seems very probable to us that some of the members of the Assembly act like truant students and their proxies are filled by their friends. It is for the State to consider whether the representatives of the people should be selected from such a group who act in such a manner. Such conduct is bound to corrupt the entire administration. The entry was obviously made so that Sri Bhagwati Prasad Shukla although he was not present in Lucknow should be able to secure economic gain by being marked present in the register but this explanation was not accepted by the police and this indicates another dangerous tendency. 'It shows that our public services are not independent' and in order to cover up a scandal which may be related to the party in power they are willing to suppress it and they will seek fantastic explanations but will not see what stares them in the face. It is again for the State to consider whether the ruling power should have such a corrupting influence upon the public services, for if this type of influence continues, it is likely to demoralise the public services.'

2. We need not give the grounds incorporated in this application on which this deletion was sought, for the Advocate General, who addressed us on behalf of the State of Uttar Pradesh, very rightly ignored them completely and advanced only one argument before us. He contended that these observations are too wide and sweeping in their range and this could not have been the intention of the Judges and as they are likely to be misunderstood by those who read them, the interests' of justice require that they should be expunged. We appreciate the step taken by the Advocate General, for those who drafted this extraordinary application seem to labour under the misapprehension that the findings and conclusions reached by this Court are revisable under Section 561-A Cr. P. C.

3. The Advocate General drew our attention specially to one sentence in the extract quoted above which we have underlined (here in ' '). As one of us dictated the decision in Prayag Bux's case, we can say with assurance that it was not intended to convey that all the members of the public services have ceased to be independent. The last sentence of the extract quoted above makes it very clear. If the Judges had intended to convey that all the members of the Public services had

ceased to be independent, there was no question of this infirmity spreading and undermining the morals of the other members of the Public services. If this application was filed only to clarify this point, the observations made by us above should satisfy the State as well as the Public services whose cause is championed by the State.

4. But the matter does not end here. This extraordinary application raises several questions on which we have to express an opinion. These questions are:

1. What are the powers of the High Court when deciding an application under Section 561-A Cr. P. C?'

2. What does the phrase 'necessary to secure the ends of justice' mean?

3. Can the State come forward as an applicant under Section 561-A C. P. C. and is this application entertainable at all?

4. Can any relief be granted to an indefinable person or group on an application filed by the State on his behalf

After considering these questions we have come to the conclusion that this application was misconceived and it is not entertainable under Section 561-A Cr. P. C. We now proceed to give our reasons.

5. To begin with we would like to state that Section 561-A Cr. P. C. confers no additional powers on the High Court, but is only a statutory recognition of the inherent powers possessed by the Judges of the High Court. Section 5b'l-A was added to the Criminal Procedure Code by the Criminal Procedure Code Amendment Act (Act XVIII of 1923). In the statement of object and reasons for this amendment it was mentioned:

'By this section it is proposed to give statutory recognition to the inherent powers of the High Court a principle which is already well recognised.'

It was necessary to make this statutory recognition because the High Courts hesitated to exercise their inherent powers to secure the ends of justice even where the injustice was palpable and apparent, because they felt that the finality of

the order which was sought to be revised could not be disturbed; under the framework of the old Criminal Procedure Code. Section 561-A was a sort of reminder to the High Court that they were not merely the Courts of law, but also the Courts of justice and as such they possessed inherent powers to remove injustice. It cannot be doubted that objectionable remarks can be expunged under Section 561-A Cr. P. C. The report of the joint Committee (1922) specifically mentions it. It says:

'We understand that a High Court has recently held (*C. Dunn v. Emperor*, ILR 44 All 401: (AIR 1922 Ah 107)(A)) that it had no power to direct the expunging of objectionable matter from a record. We think it desirable that it should be made clear that this clause is intended to meet such a case.'

6. It must, therefore, be accepted that objectionable remarks can be and should be expunged under Section 561-A Cr. P. C. If the remarks are found to be objectionable and the aggrieved party seeks redress then the interests of justice require that the injury caused to him should be removed. But before this relief can be given to him, it is necessary that these remarks should be separable from the decision and irrelevant to its findings and should amount to obiter dicta.

Those observations which are made on a 'justiciable issue' which are part of the fabric of the judgment cannot be deleted, for the judgment cannot be mutilated. In such a case only a clarification can be made. The observations sought to be expunged in this case were made on a 'justiciable' issue and cannot be described as obiter dicta. The prosecution in this case came forward with an absurd and unbelievable explanation regarding the signatures of the deceased Sri Bhagwati Prasad Shukla M. L. A., in the attendance register of the State Vidhan Sabha kept at Lucknow. The register bore the signatures of Sri Shukla on the date on which he was murdered at Barabanki. As this murder was committed in the forenoon, there was no possibility of Sri Shukla signing his name at Lucknow and then reaching Barabanki at the time when he was murdered.

It was apparent, therefore, that the register was not signed by Sri Shukla, but someone else on his behalf had put down his name. The investigating agency instead of drawing the obvious inference went to the length of suggesting that this

fabrication was made in the interests of the defence. By putting forward this case, the prosecution made it a justiciable issue and the High Court would have failed in its duty if it had not commented upon the conduct of the investigating agency and drawn the attention of the State to the danger which this conduct implied.

It seems that those who at the moment act on behalf of the State instead of focussing their attention on the danger pointed out came to the conclusion that these observations were not justified. It is open to these persons to live in 'Shangrila', but the Courts of law cannot afford to go there. Their duty is to state the 'truth' as they find it, and if 'truth' hurts, they cannot soften it by mixing it with falsehood. We need not dilate on this point, for the Advocate General conceded that the Courts of law can make observations touching public administration, if the matter comes before them as a 'justiciable issue'. We have already mentioned the manner in which this question came before the Court.

7. The next question is whether the State can come forward as an applicant under Section 561-A Cr. P. C. We asked the Advocate General to place some law or authority on this point before us, but he admitted that he could not lay his hands on any such authority. We also failed to find any law to support the proposition that the State can file such an application. 'The State' is an abstract conception and no objectionable remarks can be passed against the State. The State can neither be injured nor aggrieved by any observations made by the Court. The right to approach the High Court under Section 561-A Cr. P. C. can be exercised only by an aggrieved party.

When we asked the Advocate General as to how the State was an aggrieved party, he stated that the State has filed this application to protect the public services and the Members of the Legislative Assembly from an unwarranted disparagement. In other words the State has come forward as the champion of others. In our opinion it would not be a proper use of our inherent powers if we give relief in those cases where the injured person himself is no party to the proceedings. This relief cannot be given to those who seek it as representatives of injured persons, but it can be given only to the injured persons themselves.

Section 561-A Cr. P. C. does not contemplate the cause of 'A' being pleaded by 'B' and 'B' cannot be permitted to convince the Court that 'A' has been injured. The High Court can invoke these extraordinary powers to give relief only to bona fide injured persons, if they seek redress.

8. Again, the inherent powers of the High Court can only be used to remove a palpable injury caused to a concrete definable person, but where neither the injury is palpable nor the identity of the injured person can be fixed, no case is made out which would make it necessary for the High Court to revise a final order. Such an inference would amount to correct an error, even if it is assumed that an error was committed, and not to secure the ends of justice. The ends of justice do not require an interference in such a case, for Section 561-A Cr. P. C. confers no power on the High Court to correct final orders.

9. There is another aspect of the case which strengthens us in our opinion that the State has no locus standi to be an applicant under Section 561-A Cr. P. C. The State represents the Courts of law also and one of its duties is to defend the decisions given by competent Courts established by law. Does the law contemplate that the relief under Section 561-A can be given to an applicant ex parte without any one opposing the grant of such relief? This question in our opinion must be answered in the negative. It is not possible to accept that relief under the extraordinary provisions of Section 561-A Cr. P. C. should be given against a final order and there should be no one to oppose the relief sought. Who is to do so, if not the State? It would have been a strange sight indeed if we had called upon the Government Advocate to support the observations sought to be expunged. The State cannot be permitted to take up this dual role of challenging the order as well as defending it. We are, therefore, of the opinion that relief under Section 561-A Cr. P. C. cannot be claimed by the State for the State being an abstract conception can never be an aggrieved person.

10. Even if this application had been entertainable, the State instead of filing it before the High Court should have filed it before the Supreme Court. No doubt the Supreme Court is not specifically mentioned in the words of Section 561-A Cr. P. C., but as observed by us above, this section only gives statutory recognition of

the inherent powers of the High Court and does not confer any powers. When this section was enacted, there was no Supreme Court. It goes without saying that the inherent powers of the Supreme Court are certainly not less than the High Court and in our opinion where observations of the High Court are sought to be expunged, the proper forum for such an application is the Supreme Court and not the High Court.

11. For the reasons given above, we dismiss this application.

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